

Applicant : Jeffrey T. Mannion et al.
 Serial No. : 10/052,210
 Filed : January 16, 2002
 Page : 13 of 16

Attorney's Docket No.: 11578-006001

REMARKS

The claims have been amended to meet the objections of the examiner and to restore the requirement to claim 1 that the suspending element be flexible. This is to put the claims in better condition for appeal if that be necessary.

As noted by the examiner, the requirement that the suspending element be flexible is already in claims under rejection, see office action, page 5, examiner's category (b).

Claim 1 has also been clarified in a matter deemed inherent in previously pending claim 1, that the suspending element, and the ring portion that joins to the rim of the container, are so related that the ring portion is not disturbed when the suspending element is raised "to operating position", Fig. 22a.

Applicant strongly traverses the grounds of the final rejection, obviousness, based on Ingemann '231.

In Ingemann '231, when pull-ring 51 of the lever-type stripping device 50 is brought to operating position, because the lever has rigidity, "a fulcrum-effect will be created when the pull-ring is raised, which facilitates rupture along the weakened stripping line 22" col. 4, lines 25-27. In other words "when the pull-ring 51 is raised, the stripping device ruptures the connection of the central lid portion 29 to the anchorage portion 23 in that the weakened portion 22 is penetrated and/or broached" col. 4, lines 54-57. The Ingemann device disclosed no doubt depends on "lever action", see his claim 7.

Whereas the motivation of Applicant's invention is to preserve the integrity of a package during display and transport, Ingemann's motivation was the opposite, to open the container.

In the present office action the Examiner agreed that:

"The claims differ from Ingemann '231 in requiring: (a) the ring portion of the suspension device to not be disturbed when united with the rim formation of the container and when suspending force is applied to the distal end portion thereof (claim 1, see last three lines);"

Applicant : Jeffrey T. Mannion et al.
 Serial No. : 10/052,210
 Filed : January 16, 2002
 Page : 14 of 16

Attorney's Docket No.: 11578-006001

But, in respect of this, the Examiner said:

"With respect to (a), although Ingemann '231 does not explicitly state that the ring portion is not disturbed when united with the container and when a suspending force is applied to the distal end, it is noted that the suspending force and the level of disturbance are considered to be relative. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a certain level of suspending force would not disturb the specified elements, as determined through experimentation, thereby allowing for increased support and securement." [Emphasis ours]

The examiner has thus suggested a line of experimentation for which no motivation has been taught in the reference! The Examiner's "de minimus" argument (which we submit is not a fair argument) is in any event avoided by the clarification, in claim 1, of something that we submit has been inherent all along, that the "raising" referred to is to bring the suspending element to "operating position". Note that bringing Ingemann's lever to operating position causes his desired rupture!

In respect of the "flexibility" limitation, in the present office action the Examiner noted:

[The claims differ from Ingemann '231 in requiring] "(b) the suspending element to be flexible (claims 3, 15, 89, 95, and 99)..."

But, in respect of this the Examiner said:

"With respect to (b) and (c), although Ingemann '231 discloses the suspending device to be of a rigid plastic material (see column 4, lines 7-27), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device as a flexible thermoplastic device, for ease in economy and manufacture and ease in use."

In this we submit the Examiner has overlooked the rigidity requirement for Ingemann's lever. Reconstruction of Ingemann in this way would do violence to Ingemann's teaching. To make Ingemann's device 50 flexible would be to destroy its functionality as a lever acting over a fulcrum; put another way, the key motivation of Ingemann '231 is directly away from the change suggested by the Examiner.

Applicant : Jeffrey T. Mannion et al.
 Serial No. : 10/052,210
 Filed : January 16, 2002
 Page : 15 of 16

Attorney's Docket No.: 11578-006001

In conclusion, the Examiner is requested to review the points brought out previously, in the response filed June 10, 2004, pages 19, 20 as follows:

Ingemann is directed to providing a way to easily open a container. This is an entirely different motivating concept than that of the present invention, which provides a new means of display and transport of containers that typically must remain unopened while displayed.

Ingemann's "easily opened container" employs a pull ring arranged to rupture a weakened area at the rim of the container. In the specific form taught in Ingemann, a relatively rigid lever is moved by raising a pull ring that is part of the lever. Lifting the pull ring acts directly about a fulcrum to rupture the weakened region. Thus, Ingemann, at column 4, beginning line 8, describes: "...a stripping device 50 fitted with a pull ring 51.... [and] with a projecting portion 54.... The stripping device consists of relatively rigid material....A fulcrum-effect will be created when the pull-ring is raised, which facilitates rupture along the weakened stripping line 22."

Ingemann's teaching of structure accomplishing easy opening is entirely different from the present teaching of novel, suspended containers for display and transport, which of course, in stores, typically must involve unopened containers. Ingemann has no teaching, nor does Ingemann fairly suggest, suspending containers by engagement about a rim of the container at its mouth, via a raised suspender, without disturbing the rim region of the container. Neither Ingemann alone, nor in combination with any of the cited references, fairly suggests applicants' novel suspension system. The approach implicitly requires the relationship, now made explicit in the claims, as follows:

Claims 1, 28: "the...suspending element and the ring portion of the suspension device that is engageable with the rim of the container being so related that raising the suspending element relative to the ring portion and applying suspending force to the suspending element does not disturb the ring portion of the suspension device that is engageable with the rim of the container."

and, page 20

Ingemann's pull ring, it will be recalled, is part of a rigid structure intended to move independently of the rim region of the container to rupture the material at the rim of his container, to initiate the opening of the container.

For these reasons, it is submitted, not only are the claims, as amended, and the new claims, not anticipated under Section 102 of the patent statute. The claims also define unobvious invention under Section 103, because the relationships defined in the claims, and the motivating thought behind them, are not fairly suggested by the references of record.

Any suggestion that Ingemann et al. fairly teaches the invention as now claimed would be to use impermissible hindsight to reconstruct the reference in an un-suggested way that would lose the functionality that the reference aimed to provide!

Applicant : Jeffrey T. Mannion et al.
Serial No. : 10/052,210
Filed : January 16, 2002
Page : 16 of 16

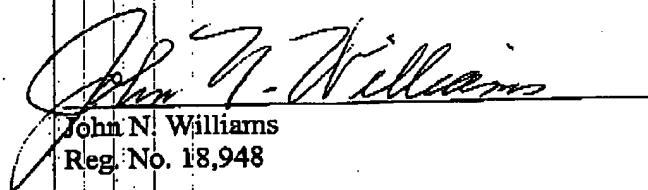
Attorney's Docket No.: 11578-006001

We therefore submit that claim 1 as amended is clearly allowable over the references of record. All other claims are dependent on claim 1. Accordingly early favorable action on all claims is solicited.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: August 9, 2005



John N. Williams
Reg. No. 18,948

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21112256.doc

2005 AVAILABLE COPY